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RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

1 Timothy Cook, E40919
2 P.O. Box 7500 D4/206
3 Crescent City, Ca. 95532
4 Plaintiff - In Pro Per
5
6
7

8 In The United States District Court
9 For the Northern District of California

10
11 Timothy Cook,
12 plaintiff,
13 v.
14 Robert Horel et al.,
15 defendants.
16

CASE NO. CV081925CRB

PLAINTIFFS OPPOSITION TO THE
DEFENDANTS' WAIVER OF REPLY AND
REQUEST FOR SCREENING ORDER;
REMOVAL OF ACTION; AND DEMAND
FOR JURY UNDER --

Title 28 U.S.C. §§ 1915A, 1441(c)(b);
and FEDERAL RULE OF CIVIL PROCEDURE
E 38.

17
18 TO THE CLERK OF THE ABOVE-ENTITLED COURT:

19 For his opposition to the defendants' waiver of reply and request
20 for screening order; notice of removal of action; and demand for
21 jury trial, Plaintiff states:

22 I.

23 1) Defendants' Horel, Risenhoover, McLean, Thacker, Worch and Sayre
24 waiver to reply to Plaintiff's first amended complaint and summons
25 (served), invokes state default and judgment proceedings pursuant
26 to California Code of Civil Procedure (CCP) §§ 585-587, 1169; §§ 585,
27 664.6, because defendants' are required to respond to plaintiff's
28 first amended complaint and summons (served) (30) thirty days

plaintiffs opposition

COOK v. Horel et al.
case no. _____

1 after service, (CCP) §§ 412.20, 465.

2 II.

3 2). Plaintiffs civil state Tort (personal injury) was lawfully brought
4 and pending before the Superior Court, Del Norte County, case no.
5 CVPI07-1026 pursuant to (CCP) § 425.12, and is governed by (CCP),
6 California Rules of Evidence (CRE), and local rules of court. (See,
7 e.g., Denari v. Superior Court of Kern County (County of Kern), (1989)
8 215 Cal. App. 3d 1488 [264 Cal. Rptr. 261] (where mixed Federal and
9 state claims brought in state court, state law evidentiary privileges
10 applied).

11 III.

12 3). Del Norte Superior Court has (general jurisdiction); is proper
13 because injury to person and/or damage to personal property
14 occurred in its jurisdictional area, and at least one defendant
15 now resides in its jurisdictional area. Said court has authority
16 to hear a wide range of cases, civil or criminal, that arise
17 within its geographic area.

18 4) Venue may be changed when there is a reasonable likelihood
19 that a fair and impartial trial cannot be held in the county, or
20 when it appears that it will be impossible to secure a jury
21 because the panel has been exhausted. (Pen C §§ 1033-34)

22 5) In this instance, neither case is a factor for removing
23 plaintiffs state action to the district court.

24 IV.

25 6). Defendants' must not be allowed to use Federal Courts
26 as a shield to disregard their legal obligations to comply
27 with (CCP) California Tort Act and/or plaintiffs lawsuit.

28 7) Defendants' attempt to manipulate Federal Courts to

1 waive their right to reply and request for screening order;
2 removal of (state) action; and demand for jury trial shows
3 an attribute of bad-faith.

4
5 **V.**

6
7 ⑥) For the aforementioned reasons Plaintiff respectfully requests
8 this court to deny defendants' motions for:

9
10 a) waiver of reply and request
11 for screening order under
12 28 U.S.C. § 1915A

13 b) removal of action under
14 28 U.S.C. § 1441(c)
15 [Federal Question]

16 c) demand for jury trial under
17 Federal Rules of Civil Procedure
18 (FRCP) 38 ...

19 and to remand all matters to state court for further
20 proceedings.

21 date: April 18, 2008

22
23 Respectfully Submitted,
24 Timothy Cook
25 ~~Timothy Cook~~
26 Plaintiff-In Pro Per
27
28

PROOF OF SERVICE BY MAIL

(C.C.P. Section 101a #2105.5, 20 U.S.C. 1746)

I, Timothy Cook, am a resident of Pelican Bay State Prison, in the County of Del Norte, State of California. I am over eighteen (18) years of age and am a party to the below named action.

My Address is: P.O. Box 7500, Crescent City, CA 95531.

On the 18 day of April, in the year of 2008, I served the following documents: (set forth the exact title of documents served)

Plaintiffs (opposition) motion to the defendants' waiver of reply and request for screening order; Notice of Removal; and demand for jury under 28 U.S.C. §§ 1915A; 1441(c)(b) and (FRCP) 38

on the party(s) listed below by placing a true copy(s) of said document, enclosed in a sealed envelope(s) with postage thereon fully paid, in the United States mail, in a deposit box so provided at Pelican Bay State Prison, Crescent City, CA 95531 and addressed as follows:

United States District Court for
the Northern District of California
U.S. Court House / Office of Clerk
450 Golden Gate Avenue
San Francisco, Ca. 94102-3483

I declare under penalty of perjury that the foregoing is true and correct.

Dated this 18 day of April, 2008.

Signed: Timothy Cook
(Declarant Signature)

Timothy Cook, E40919 D4-206
P.O. Box 7500 PBSP-SM
Crescent City, Ca. 95532

PELICAN BAY STATE PRISON
5905 Lake Earl Dr
Crescent City CA 95532

United States District Court for
the Northern District of California
U.S. Courthouse / Office of the Clerk
450 Golden Gate Avenue
San Francisco, Ca. 94102-3483



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